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104

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,194	05/14/2001	Oomman Painumoottil Thomas	KCC-15,893	8181
35844	7590	04/20/2004	EXAMINER	
PAULEY PETERSEN KINNE & ERICKSON 2800 WEST HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195			CHEVALIER, ALICIA ANN	
			ART UNIT	PAPER NUMBER
			1772	
DATE MAILED: 04/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/855,194

Examiner

Alicia Chevalier

Applicant(s)

THOMAS, OOMMAN
PAINUMOOTIL

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,10-13,15,16,18,19 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,10-13,15,16,18,19 and 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/1/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

RESPONSE TO AMENDMENT

1. Claims 1-7,10-13,15,16,18,19 and 21-27 are pending in the application. Claims 8, 9, 14, 17, 20 and 28-50 have been cancelled.
2. Amendments to claims, filed on February 6, 2004, have been entered in the above-identified application.

WITHDRAWN REJECTIONS

3. The 35 U.S.C. §103 rejection of claims 1-3, 6, 8, 11-16, 18, 21-25, 27 and 28 as over Bruemmer et al. (US Patent No. 5,582,606) in view of Sauer (US Patent No. 6,121,510), made of record in paper #23, mailed November 19, 2003, pages 2-5, paragraph #4 has been withdrawn due to Applicant's amendment filed February 6, 2004.
4. The 35 U.S.C. §103 rejection of claims 4, 5 and 7 as over Bruemmer in view of Sauer and further in view of Sauer (US Patent No. 5,527,300), made of record in paper #23, pages 5-6, paragraph #5 has been withdrawn due to Applicant's amendment filed February 6, 2004.
5. The 35 U.S.C. §103 rejection of claim 19 as over Bruemmer in view of Sauer and further in view of Melbye et al. (US Patent No. 5,681,302), made of record in paper #23, pages 6-7, paragraph #6 has been withdrawn due to Applicant's amendment filed February 6, 2004.
6. The 35 U.S.C. §103 rejection of claims 1-3, 6, 8-16, 21 and 28 as over Richardson (US Patent No. H1420) in view of Bruemmer, made of record in paper #23, pages 7-9, paragraph #7 has been withdrawn due to Applicant's amendment filed February 6, 2004.

7. The 35 U.S.C. §103 rejection of claims 1-3, 7-16, 21 and 26-28 as over Beitz et al. (US Patent No. 6,248,097) in view of Bruemmer, made of record in paper #23, pages 9-11, paragraph #8 has been withdrawn due to Applicant's amendment filed February 6, 2004.

NEW REJECTIONS

8. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 103

9. Claims 1, 2, 3, 10-13, 15, 16, 18, 19 and 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Louis et al. (U.S. Patent No. 5,993,433) in view of Bruemmer et al. (U.S. Patent No. 5,582,606).

St. Louis discloses a gusset-flap composite member (*col. 2, lines 4*) for use in conventional absorbent articles, such as disposable diapers, as an elasticized containment or barrier flap at the leg (*col. 1, lines 14-19*).

Regarding Applicant's claim 1, St. Louis discloses an elastomeric laminate (*gusset-flap member, col. 4, line 60*), comprising an elastomeric film (*barrier layer, col. 4, lines 60*), multiple strands (*first arrangement of a first plurality of separate elastomeric members, col. 5, lines 7-9*), a first facing sheet and a second facing sheet (*gusset-flap fabric layer, col. 4, line 64*).

The elastomeric film having a first major surface and a second major surface (*figure 6*). The multiple strands of elastomeric material are secured to the first major surface of the elastomeric film (*figure 6*). The elastomeric strands and the elastomeric film are substantially

the same length, since the reference discloses that the first arrangement of elastomeric members extend longitudinally along the barrier layer (*col. 5, lines 4-18*). The first facing sheet is bonded to the first major surface of the elastomeric film with the multiple strands of elastomeric material positioned between the elastomeric film and the facing sheet (*figure 6 and col. 5, lines 4-12*). The second facing sheet is bonded to the second major surface of the elastomeric film (*figure 6 and col. 5, lines 4-12*).

Since the gusset-flap layer surrounds the barrier layer on both sides forming two layers that sandwich the elastomeric strands and the barrier (*figure 6*), it is structurally equivalent to Applicant's claimed "second facing sheet is separate from the first facing sheet." MPEP 2183(D).

St. Louis fails to disclose wherein at least two of the elastomeric strands have compositions that differ from one another.

Bruemmer discloses an absorbent article, such as infant diapers, training pants, adult incontinence products, and the like, comprising leg cuffs and containment flaps (*col. 1, lines 10-31*).

Bruemmer further discloses the containment flap comprises a web having a first major surface and a second major surface and multiple strands of elastomeric material secured to the first major surface of the elastomeric film (*col. 9, lines 12-18 and figure 13*). Furthermore, the containment flap comprises two different types of elastic strands, the flap elastic and the fold line flap elastic that are made of different materials and provide different constrictive forces which helps prevent fluid from leaking (*col. 9, lines 33-36 and summary of the invention*).

St. Louis and Bruemmer are analogous because they both disclose elastic containment flaps, i.e. gusset-flaps, for diapers.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Bruemmer's two different types of materials for the elastomeric strands in St. Louis in order to provide the laminate with different constrictive forces (*col. 9, lines 33-36 and summary of the invention*).

One of ordinary skill in the art would have been motivated to provide a laminate with different constrictive forces because it helps prevent fluid from leaking (*col. 9, lines 33-36 and summary of the invention*).

It is desirable to have prevent fluid from leaking in absorbent articles, such as disposable diapers in order to avoid irritating the user's skin, ruining cloth and rashes.

Regarding Applicant's claim 2, Bruemmer discloses that the elastic strand material comprises a thermoplastic polymer (*Lycra, col. 9, lines 37-39*). Lycra is a spandex fiber, which is a generic name for fiber-forming substance composed of at least 85% of polyurethane, a thermoplastic polymer.

Regarding Applicant's claim 3, St. Louis discloses the elastomeric film material comprises a thermoplastic polymer (*polyamides, etc., col. 13, lines 10-12*).

Regarding Applicant's claim 10, St. Louis discloses at least one of the first and second facing sheets is a spunbond sheet (*col. 13, lines 45-46*).

Regarding Applicant's claims 11-13, St. Louis discloses the elastomeric laminate is incorporated into the structure of a garment, wherein the garment is one selected from the group of personal care garments, medical garments, industrial workwear garments, diapers, training

pants, swim wear, absorbent underpants, adult incontinence products, feminine hygiene products, protective medical gowns, surgical medical gowns, caps, gloves, drapes, face masks, laboratory coats and coveralls, since the reference discloses the gusset-flap composite member is used in conventional absorbent articles, such as disposable diapers (*col. 1, lines 14-19*).

Regarding Applicant's claims 15 and 16, Bruemmer discloses that at least two different portions of the elastomeric film exhibit amounts of elastic tension that differ from one another (*col. 9, lines 33-36 and summary of the invention*). St. Louis discloses that the laminate further comprises a plurality of elastomeric strands on the first major surface of the film (*second arrangements of elastomeric members, col. 5, lines 12-4 and figure 6*).

Regarding Applicant's claim 18, Bruemmer discloses that at least two of the elastomeric strands exhibit amounts of elastic tension that differ from one another (*col. 9, lines 33-36 and summary of the invention*).

Regarding Applicant's claim 19, St. Louis discloses at least two of the elastomeric strands have thicknesses that differ from one another, since the reference discloses that the individual elastic members may be varied in thickness (*col. 10, lines 28-29*).

Regarding Applicant's claims 21-25, St. Louis discloses that the elastomeric strands can be arranged in periodic spacing, nonperiodic spacing, in groups, have different spacing between the groups and exhibit different amounts of elastic tension from each other (*col. 10, lines 26-50*).

Regarding Applicant's claim 26, St. Louis discloses a second elastomeric strand secured to the second major surface of the elastomeric film (*figure 6*).

10. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. Louis in view of Bruemmer as applied above, and further in view of Sauer (U.S. Patent No. 5,527,300).

St. Louis and Bruemmer is relied upon as described above.

St. Louis and Bruemmer fail to disclose either the elastomeric strand material or elastomeric film material made comprising a thermoset polymer and the strand material and the film material are different.

Sauer '300 discloses an absorbent article for incontinence garment or disposable diapers (col. 1, lines 17-26). The absorbent article comprises a plurality of elastic strands, which can be composed of synthetic thermoplastic elastomers, or thermoset polymers (col. 18, lines 8-21).

It would have been obvious to one of ordinary skill in the art to use a thermoset material as the strands in Bruemmer because Sauer '300 discloses that they are equivalent materials for use in the art. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a thermoset material for the elastomeric film material or have different compositions for the strands and the elastomeric film, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use.

ANSWERS TO APPLICANT'S ARGUMENTS

11. Applicant's arguments in the response filed February 6, 2004 regarding the 35 U.S.C. 103 rejections previously of record have been considered but are moot since the rejections have been withdrawn.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1772

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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4/15/04




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1772

4/16/04